

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation of Chiropractic License of Frederick William Benz, Respondent	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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Administrative Law Judge Lucinda E. Jesson (ALJ) conducted a hearing in this matter on July 19, 2006, at 9:30 a.m., at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, MN 55401.

The Department of Revenue was represented by Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, MN 55146-0220. Respondent was represented by Ryan R. Palmer, 8000 Norman Center Drive, Suite 1000, Minneapolis, MN 55437. The OAH hearing record closed at the end of the hearing on June 28, 2006.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner. Parties should contact Commissioner Dan Salomone, Mail Station 5555, 600 North Robert Street, St. Paul, Minnesota 55146-5555 to file exceptions.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minnesota law, the Commissioner of Revenue is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

STATEMENT OF THE ISSUES

Should Respondent's Chiropractic License be revoked for failure to pay delinquent taxes, penalties and interest?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 18, 2006, the Department sent a copy of the Notice of Intent to Revoke License to Fred Benz indicating that a total amount of \$35,389.69 in delinquent taxes, penalties or interest for individual income tax and provider tax was overdue for tax years 1995, 1998, 1999, 2000, 2001, 2003, 2003, 2004 and 2005. The Notice indicated that the Department intended to notify his licensing board that it must revoke Respondent's license unless he paid the amount due by May 19, 2006.¹

2. The Notice of Intent to Revoke License stated that Dr. Benz could request a hearing before the Office of Administrative Hearings by stating, in writing, the basis for his protest and submitting it by May 19, 2006.

3. On May 16, 2006, Respondent requested a hearing, indicating that he would pay the back taxes, but that he would need to do so over a 24 month time period. His letter stated that he has "been on and off repayment plans in the past."²

4. Earlier in 2006, Respondent had stated that the most he could afford was a payment plan providing for monthly payments in the amount of \$400.³ Respondent has been on different payment plans on and off since the year 2000. During those years, he frequently missed payments and never fulfilled a payment plan agreement.⁴ He is not currently on a payment plan. At the hearing, Respondent testified that the most he could currently afford to pay in installments was a "few hundred" dollars a month.⁵

¹ Ex. 1.

² Ex. 2.

³ Ex. 9.

⁴ Testimony of Barb Jopling; Exs. 7, 10.

⁵ Testimony of Fredrick Benz.

5. In December 2004, Respondent transferred his homestead to his son for \$500. He continues to live in the home, however, paying \$3,000 a month in rent.⁶

6. Benz's offer of a payment plan of \$400 a month was denied by the Collection Division. Benz requested reconsideration by the Department's Taxpayer Rights Advocate Office (Advocate Office). His reconsideration request was denied, based, in part, on the Advocate Office's financial calculation that he had the ability to pay \$2,790.00 per month and that his housing allowance was beyond the allowable standard.⁷

7. On June 13, 2006, a Notice and Order for Hearing was issued by the Department, and served on Respondent by U.S. Mail. The Notice set a hearing for July 19, 2006 at the Office of Administrative Hearings in Minneapolis.

8. Respondent appeared at the hearing. He acknowledged that he owed \$34,886.66 in individual and provider taxes as of July 19, 2006.⁸

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law gives the Administrative Law Judge and the Commissioner of Revenue authority to conduct this contested case proceeding and to make findings, conclusions, and recommendations or a final order, as the case may be.

2. The Department gave proper and timely notice of the hearing, and fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. The Respondent has failed to pay both individual income tax and provider tax as required by law. At the time of the hearing, Respondent owed a balance of \$34,886.66 in overdue taxes, penalties and interest.⁹

4. As a result of the Respondent's failure to pay tax due and owing, the Commissioner of Revenue may issue a Notice of License Revocation, pursuant to Minn. Stat. 270C.72, subd. 1, to the Board of Chiropractic Examiners (the Board) indicating that the Board may not renew and must revoke the Respondent's license.

⁶ Benz testimony; Ex. 5.

⁷ Ex. 5.

⁸ Benz testimony; Ex. 3.

⁹ Benz testimony; Ex. 3.

5. The conditions for issuance of a tax clearance certificate have not been met and upon receipt of the Notice of License Revocation, the Board must revoke the Respondent's License.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner issue a Notice of License Revocation, to the Board of Chiropractic Examiners indicating that the Board may not renew and must revoke the License of Fredrick Benz.

Dated: August 21, 2006

s/Lucinda E. Jesson

LUCINDA E. JESSON
Administrative Law Judge

Recorded: 1 tape
No transcript prepared

MEMORANDUM

The Department's proposed revocation of Dr. Benz's License is based on Minn. Stat. 270C.72, which provides that the state may not issue, transfer, or renew and must revoke a professional license if the commissioner notifies the licensing authority that the licensee owes the state \$500 or more in delinquent taxes.¹⁰ Dr. Benz has owed delinquent individual and provider taxes for more than five years. He has been on multiple payment plans and while he has made payments at times, the record reflects a history of defaults on each of these past agreements.¹¹

Dr. Benz acknowledges that he owes income and provider taxes. His contention at the hearing was that, given the right payment plan he would repay the taxes and that without his license to practice, he had no ability to repay.¹² Given the strong language of the governing statute and Dr. Benz' past record of failing to live up to payment agreements, these statements (even if true) are no reason to forgo issuing a Notice of License Revocation.

L. E. J.

¹⁰ Minn. Stat. 270.72 (2004)

¹¹ Ex. 4.

¹² Benz testimony.